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2009 SEP 23 PM 1:34

HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,)	CASE NO. OSH 2009-33
)	(Inspection No. 311436786)
DEPARTMENT OF LABOR AND)	
INDUSTRIAL RELATIONS,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A; APPROVAL
Complainant,)	AND ORDER
)	
vs.)	
)	
ANDRES ZAMBRANO,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent ANDRES ZAMBRANO ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about December 30, 2008, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 4211 Waialae Avenue, Honolulu, Hawaii 96816.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on May 18, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$2,250.00. *See Exhibit A.*

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 4211 Waialae Avenue, Honolulu, Hawaii 96816.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than ten (10) days after this Agreement is filed; failure to timely do so may result in additional penalties or follow up inspections.
5. The violations and corresponding characterizations as stated in the Citation are affirmed. *See Exhibit A.*
6. The Director reduces Respondent's aggregate penalty from \$2,250.00 to \$1,575.00, which Respondent shall pay in monthly installments at the rate of \$50.00 each month.
7. Respondent agrees to pay the total reduced penalty of \$1,575.00 in

monthly installments of \$50.00, each of which is due and payable on the tenth (10th) day of each month, beginning with the month of September 2009.

8. Respondent further agrees that if it fails to comply with the payment plan, as stated in paragraph 7 above, the Director may give notice and may declare the entire original penalty in the amount of \$2,250.00 immediately due and owing, provided that all payments made by Respondent shall be credited to Respondent and retained by the Director of Budget and Finance.

9. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. Respondent's payments shall be payable to the Director of Budget and Finance and sent to the Hawaii Occupational Safety and Health Division, 830 Punchbowl Street, Room 425, Honolulu, Hawaii 96813.

11. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

12. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

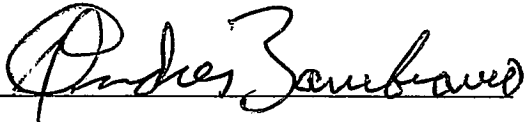
13. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

14. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

15. The Parties agree that upon the approval of this Agreement by the Board, the Board shall dismiss this case and Respondent's appeal.

DATED: Honolulu, Hawaii, September 23, 2009.

ANDRES ZAMBRANO

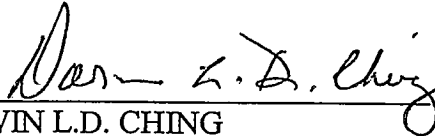
By: 
Its: _____

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



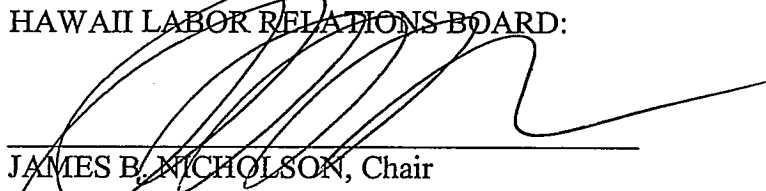
J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii


DARWIN L.D. CHING

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 353

DATED: September 23, 2009


JAMES B. NICHOLSON, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

In re: Director, Dept. Of Labor And Indus. Relations v. Andres Zambrano, Case No. OSH 2009-33, Stipulation And Settlement Agreement; Exhibit "A"; Approval And Order.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7005 1820 0003 3812 2419

Citation and Notification of Penalty

To:

Andres Zambrano
and its successors
1858 Waimano Home Rd #E
Pearl City, HI 96782

Inspection Number: 311436786 (Soon Hye
Edgerton)
Inspection Date(s): 12/30/2008- 01/30/2009
Issuance Date: 05/18/2009
OSHC ID: E4528
Optional Report No.: 02509
Inspection Type: Complaint
Scope of Inspection: Partial Inspection

Inspection Site:

4211 Waialae Ave
Honolulu, HI 96816

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Andres Zambrano
1858 Waimano Home Rd #E
Pearl City, HI 96782

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 05/18/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Andres Zambrano
Inspection Site: 4211 Waialae Ave, Honolulu, HI 96816

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 1a Type of Violation: **Serious**

29 CFR 1926.451(b)(1) [Refer to chapter 12-130.1, HAR] was violated because:

Each platform on all working levels of scaffolds was not fully planked or decked between the front uprights and the guardrail supports. As a result, the employees who were working on the scaffolds were potentially exposed to serious fall injuries.

29 CFR 1926.451(b)(1) states "Each platform on all working levels of scaffolds shall be fully planked or decked between the front uprights and the guardrail supports."

Location: Project site at 4211 Waialae Ave

Date By Which Violation Must be Abated:
Penalty:

05/22/2009
\$ 750.00

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311436786

Inspection Dates: 12/30/2008-01/30/2009

Issuance Date: 05/18/2009



Citation and Notification of Penalty

Company Name: Andres Zambrano

Inspection Site: 4211 Waialae Ave, Honolulu, HI 96816

Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1926.451(b)(3)(ii) [Refer to chapter 12-130.1, HAR] was violated because:

The front edge of the working platform exceeded 18 inches from the face of the plastering work. As a result, the employees who were working on the scaffolds were potentially exposed to serious fall injuries.

29 CFR 1926.451(b)(3)(ii) states "Except as provided in paragraphs (b)(3)(i) and (ii) of this section, the front edge of all platforms shall not be more than 18 inches from the face of the work, unless guardrail systems are erected along the front edge and/or personal fall arrest systems is used in accordance with paragraph (g) of this section to protect employees from falling. The maximum distance from the face for plastering and lathing operations shall be 18 inches (46 cm)."

Location: Project site at 4211 Waialae Ave

Date By Which Violation Must be Abated:

05/22/2009

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Andres Zambrano
Inspection Site: 4211 Waialae Ave, Honolulu, HI 96816

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1926.451(f)(7) [Refer to chapter 12-130.1, HAR] was violated because:

Scaffolds were not be erected, moved, dismantled, or altered under the supervision and direction of a competent person qualified in scaffold erection, moving, dismantling or alteration. As a result, the employees who were working on the scaffolds were potentially exposed to fall hazards.

29 CFR 1926.451(f)(7) states "Scaffolds shall be erected, moved, dismantled, or altered only under the supervision and direction of a competent person qualified in scaffold erection, moving, dismantling or alteration. Such activities shall be performed only by experienced and trained employees selected for such work by the competent person."

Location: Project site at 4211 Waialae Ave

Date By Which Violation Must be Abated:
Penalty:

05/22/2009
\$ 750.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311436786

Inspection Dates: 12/30/2008 - 01/30/2009

Issuance Date: 05/18/2009



Citation and Notification of Penalty

Company Name: Andres Zambrano

Inspection Site: 4211 Waiialae Ave, Honolulu, HI 96816

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1926.451(g)(1) [Refer to chapter 12-130.1, HAR] was violated because:

Two employees working on a scaffold which was approximately 12 feet above ground level were not protected from falling to ground level. As a result, the employees who were working on the scaffolds were potentially exposed to serious fall injuries.

29 CFR 1926.451(g)(1) states "Fall protection. Each employee on a scaffold more than 10 feet (3.1 m) above a lower level shall be protected from falling to that lower level. Paragraphs (g)(1) (i) through (vii) of this section establish the types of fall protection to be provided to the employees on each type of scaffold. Paragraph (g)(2) of this section addresses fall protection for scaffold erectors and dismantlers."

Location: Project site at 4211 Waiialae Ave

Date By Which Violation Must be Abated:

05/22/2009

Penalty:

\$ 750.00

DARWIN L.D. CHING
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Andres Zambrano
Inspection Site: 4211 Waialae Ave, Honolulu, HI 96816
Issuance Date: 05/18/2009

Summary of Penalties for Inspection Number 311436786

Citation/1, Serious	= \$	2,250.00
TOTAL PENALTIES	= \$	2,250.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.